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# Civil LAW EXAM 2022 - Civ3701

University of South Africa (University of South Africa)

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# CIVIL LAW EXAM

## Question 1

A. **When determining why a Magistrates' Court has jurisdiction to hear a matter, the question is answered by reference to sections 28, 29 and 46 of the Magistrates' Courts Act, 32 of 1944, and not on the grounds of common law jurisdiction. Explain why this is the case**

B. **Briefly discuss an application to set aside irregular proceedings.**

When a party to a cause takes an irregular step, the other party may apply to court to set it aside. Such application must be brought on notice to all parties specifying particulars of irregularity.

This is an application that means in terms of Rule 30 provides the other party with a mechanism by means of which the irregularity may be set aside or dealt with.

In terms of Rule 30(2) it was makes mention of how an application to set aside an irregular proceeding would be on notice to all the parties specifying the particulars of the irregularity and made only if, the applicant himself has not taken a further step with knowledge of the irregularity.

C. **What is the meaning of the term "whole cause of action"?**

Compared to the requirements at common law, as applied for the purposes of jurisdiction in the High Court, the term "cause of action" is given a restricted meaning in regard to the exercise of jurisdiction by a magistrate's court. In the High Court, either the conclusion of a contract or its performance or its breach would be regarded as a sufficient cause of action for the exercise of jurisdiction. In the magistrate's court, the whole cause of action must have arisen within the district (or regional division) concerned, for example, the conclusion and breach of a contract.

D. **Does the plaintiff have a recourse to the transfer of a case from lower courts to the High Court?**

There is no statutory equivalent for the plaintiff. A plaintiff chooses the forum in which to litigate and therefore he or she must bear the consequences of doing so. A plaintiff who has instituted an action in the magistrate's court is free to change his or her mind and abandon the action in the lower court, and commence proceedings in a High Court, with resulting cost implications.

## Question 2

A. **J learns that K, who is a journalist for Sunday Times newspaper, is in possession of and is about to publish J's photos in a very compromising situation the following day.**

I. **Name the type of application that J must use in order to prevent K from publishing the photographs**.

- Interdict

II. **Name the affidavits that must be exchanged between the parties**

- Supporting affidavit
- Answering Affidavit
- Replying Affidavit

III. **Name the procedure that J may use if K's affidavit contains inadmissible evidence.**

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Motion to strike out brought by opposing party to strike out the offending matter when affidavit contains hearsay or inadmissible evidence or when matter is argumentative, irrelevant, vexatious or scandalous in terms of Rule 6(15).

**B. B wishes to obtain a divorce from her husband M. merely state the correct answer to each question that follows. You must not give reasons for your answers.**

**I. What type of summons must B use to institute the action?**
- Combined summons

**II. How will the summons be served on M if he is in Namibia?**
- Edictal citation

**III. What document can B sign whereby authorising her attorney to act on her behalf?**
- Power of attorney

**IV. What is the first process that M must file if he wishes to oppose the divorce proceedings?**
- Notice of intention to defend.

**V. What pleading must M file in order to raise his defence?**
- Particulars of claims

**VI. What procedure should a party use if the name of one of the minor children is stated incorrectly in the plea?**
- Notice of intention to amend

**VII. What procedure can B use if M files a plea that contains a scandalous statement about B?**
- Strike out

VIII. **What pleading can B file if M raises new averments in his plea?**
- Replication

**IX. What proceedings may B use after pleadings have closed in order to establish what documents M will raise as evidence at trial?**
- Set down

**X. What form of cost order will B request if she is of the opinion that M seriously misconducted himself during the course of proceedings?**
- Party and Party cost.

## Question 3

**A. S and T attend a conference for law lecturers in Cape Town. While delivering his paper, S shares a joke with the audience about T. The joke is defamatory, and T is not happy about it. The following day, T gets a call from his wife in Johannesburg about the joke which had been published in the newspaper Sowetan. Both S and T live in Mamelodi (Pretoria). T confronts S in his hotel room and later stones his car. The damages to repair the car amount to R500 000. S is unhappy about the whole situation and wants to sue for the damages. With these facts in mind, answer the following questions and give full reasons for your answers:**

**I. Will the Western Cape High Court, Cape Town; Gauteng Division, Pretoria; or Gauteng Local Division, Johannesburg have jurisdiction to hear the matter against Thabo?**
The Western Cape high Court will have Jurisdiction based on ratione rei gestae, and the claim is a claim sounding in money. But both A and T don't leave within the jurisdiction of the Western Cape High Court and are regarded as local peregrinus of the Western Cape High Court. Where the defended is a local peregrinus of the court concerned, this court

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may exercise jurisdiction only if the cause of action arose within its jurisdictional area. A "cause of action" comprises the facts that give rise to an enforceable claim. Which is the case in this situation. Also known as ratione rei gestae

II. **Assume that T is an American resident and has a holiday home in Durban. Will the Gauteng Division, have jurisdiction in the matter?**
Yes because in this instance T is would be regarded as a foreign preregrinus and here before a claim regarding money may be brought against the defendant if her or she, for the purpose of this case if he is a foreign peregrinus it is usually necessary to acquire a hold over such a person. This is called an attachment ad funandam iurisdandam iurisdictionem.

III. **Will your answer to (ii) above change if T consents to the Gauteng Division, Pretoria? Your answer should refer to applicable case law.**
Yes, it would in the case of Halse v Warwick, the court approved and adopted the approach prevailing in the Transvaal, where, in Lecomte v W and B Syndicate of Madagascar Ltd 1905 TS 295; 1905 TS 696, it was established that an incola plaintiff could be granted an order for attachment ad fundandam jurisdictionem, even though the cause of action arose outside the court's area of jurisdiction.

B. **X and Y have been married to each other for 2 Years. They both reside in Botswana. Y is sent to Durban for employment. Whilst in Durban for 13 months, Y decides to divorce X. With these facts in mind answer the following questions:**

I. In terms of the Divorce Act 70 of 1979 there is a provision for such a case under section 2 of this act where mention is being made for a case of this nature, "Section 2 of the Act provides that a court shall have jurisdiction in a divorce action if the parties are or either of the parties is domiciled in the area of jurisdiction of the court on the date on which the action is instituted (s 2(1)(a)) or ordinarily resident in the area of the jurisdiction of the court on the said date and have or has been ordinarily resident in the Republic for a period of not less than one year immediately prior to that date (s 2(1)(b)). "
And with the above being mentioned in reference to this case both of this parties are domiciled in Botswana but Y is ordinarily a resident within the high court of Durban and has been ordinarily resident in the Republic for a period no less than one year (2yr in this case), which would mean that Y may institute the divorce in the Durban high court.

II. Yes, under Section 28(1A) of the Magistrates' Courts Act provides that a regional magistrate's court shall have divorce jurisdiction over both or either party who is "(I) domiciled in the court's area of jurisdiction on the date on which the proceedings are instituted; or (ii) ordinarily resident in the court's area of jurisdiction on the said date and has been ordinarily resident in the Republic for a period of not less than one year immediately prior to that date".

**MAGISTRATES' COURTS JURISDICTION AND PROCEDURE**

## Question 4

A. Discuss under what circumstances the court will grant request for amendment of pleadings.
In both Rule 55 as well as section 111, it was held that the general rule was that an amendment of notice of motion, a summons or pleading in action, would always be allowed unless the application to amend was mala fide or the amendment would cause injustice or prejudice to the other side.
The aim of the amendment is to obtain a proper solution to the dispute between the parties

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and to identify the real issues in the matter.
Section 111: In any civil proceedings the court may any time before judgement, amend any summons (or other doc forming part of the record) provided that the amendment doesn't prejudice any other party affected.
Section 55: provides an easy way of effecting amendments to pleadings.

**B. Name the judgments that a court may grant after the plaintiff and defendant have closed their respective cases and presented argument.**

1. In favour of plaintiff,
2. in favour of defendant,
3. absolution at the close of the plaintiff's case,
4. absolution from the instance at close of defence case where onus on plaintiff or
5. Absolution at close of defence case where onus on defence.

**C. List any three items that are exempt from execution in terms of section 67 of the Magistrate's Court Act of 1944.**

1. the necessary beds, bedding and wearing apparel of the execution debtor and of his family;
2. the necessary furniture (other than beds) and household utensils in so far as they do not exceed in value the sum of R 2,000;
3. Stocks, tools and agricultural implements of a farmer in so far as they do not exceed in value the sum of R 2,000.

**D. A drives through a red traffic light and collides with B's motor vehicle. B suffers damages in the amount of R420 000. B lives and works in Johannesburg. A lives in Pretoria. B wishes to issue summons against A in the Magistrates' Court for damages suffered.**

I. The amount that is allowed in Magistrates courts is R 200 000 to R 400 000 and in terms of section 29 of the Magistrates Courts Act 32 of 1944.
The amount claimed for by B clearly exceeds the amount permitted by the regional court. With that being said no regional court is competent to exercise jurisdiction.

II. Yes, it would defer because not the amount would be within the jurisdiction of the Magistrates court as mentioned in section 29 of the Act.

## QUESTION 5

A. This is a claim for specific performance. Section 46(2) (c) Magistrates' Courts Act, 1944 provides that a magistrate's court may not hear claims for specific performance without an alternative claim for damages. Specific performance is the performance of an act that a person has contractually undertaken to perform. According to the courts' definition of specific performance, what is referred to be the performance of an act that was contractually undertaken?
With the above being said none of the courts will have jurisdiction in the matter. Because directing Y to finish building would amount to an order for specific performance, which, without an alternative claim for damages, cannot be heard by a magistrate's court.

B. The automatic rent interdict:

- Although an ordinary interdict may be used to prohibit the removal of household effects, the Magistrates' Courts Act has created a simpler and less expensive procedure in section 31.

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- This provides that, when summons is issued for arrear rental the plaintiff may include in the summons a notice prohibiting anyone from removing from the leased premises, any of the household effects which are subject to the hypothec, until an order dealing with such goods has been made by the court.
- The notice in the summons serves automatically as an interdict forbidding anyone with knowledge thereof to remove goods from the premises, and no court application or other formalities are required. The lessee or anyone else who is affected by the notice may apply to court to have it set aside.

**C. N, who lives in Johannesburg, buys a truck for R190 000 from T in Bloemfontein. T lives in Bloemfontein. N pays T R160 000 of the purchase price and undertakes to pay the balance of R30 000 on delivery of the truck. T delivers the truck to N's home, but despite demand, N fails to pay the balance of the purchase price. Will any Magistrates' Court in all the centres mentioned above have jurisdiction to hear an action instituted by T against N for the return of the truck? Give detailed reasons for your answer.**

**Answer:**

I terms of section 28 ( 1 )( a ) of the Magistrates Courts Act it is mentioned that a magistrate's court will have jurisdiction over any person who resides, or carries on business, or employed within its district or regional division.

Section 28(1) (d) of the MCA provides that a magistrate's court may exercise jurisdiction over any person, whether or not he or she resides, carries on business or is employed within the district, if the cause of action arose wholly within the particular jurisdictional area or district of the court. For the cause of action to have arisen "wholly" in the particular jurisdictional area of district of a court, conclusion of a contract and breach of contract must have occurred within the same jurisdictional area.

It the case above N lives (resides) in Johannesburg. The contract was conclude in Bloemfontein. With that being the case the breach took place in Johannesburg. Therefore, in terms of section 28(1) (a) Johannesburg district magistrate's court will have jurisdiction as N reside there. However, in terms of section 28(1) (d), neither the Bloemfontein nor the Johannesburg district magistrate's court where a part of the cause of action arose will have jurisdiction.

**APPEAL, REVIEW AND VARIATION OF JUDGMENT**

**QUESTION 6**

A. Leave to appeal may be requested at the time that the judgment or order is made. If this is not followed, then an application for leave to appeal must be filed within 15 days of the judgment or order appealed against (see Rule 49(1) of the Uniform Rules of Court. The application is heard by the judge who made the judgment or order. Note: the phrase "a request for leave to appeal" illustrates that this is an appeal from a High Court. Appeals in the magistrate's courts are automatic and a request for leave to appeal is not required.
In terms of the common law.

B. Review is aimed at correcting irregularities which allegedly occurred in connection with the trial.
Review is concerned with the decision-making process as opposed to a decision per se. In Johannesburg Consolidated Investment Company Ltd v Johannesburg Town Council 1903 TS,

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it was held that the proceedings of inferior courts are brought before superior courts in respect of grave irregularities. Review is aimed at correcting irregularities which allegedly occurred in connection with the trial.

C. Only if the matter raises an arguable point of law of general public importance, which ought to be considered by the Constitutional Court, and if the Constitutional Court grants leave to appeal (see section 167(3) of the Constitution, 1996).
D. A court's judgment becomes final and unalterable by it under common law when the judgment is pronounced by the judicial officer, who then becomes focus officio. However, there may be reasons why the judgment does not correctly reflect the intention of the parties or the judicial officer.

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